

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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GQ SAND, LLC,

Plaintiff and Counterclaim Defendant,

v.

ORDER

15-cv-152-wmc

CONLEY BULK SERVICES, LLC,

Defendant and Counterclaim Plaintiff,

RANGE MANAGEMENT SYSTEMS, LLC, and

Defendant and Counterclaim Plaintiff,

and

NEJGID, LLC,

Defendant.

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This case is set for jury trial commencing June 27, 2016. The court held a final pretrial conference on June 21, 2016, at which the parties appeared personally and by counsel. The court issued several rulings on the record which it will formalize in the order below.

ORDER

IT IS ORDERED that:

- 1) The court continues to reserve on whether to grant summary judgment to plaintiff GQ Sand on its breach of contract claim against defendant RMS.
- 2) Plaintiff GQ Sand's motion *in limine* no. 2 (dkt. #205) and defendant Conley Bulk Services motion *in limine* no. 1 (dkt. #180) are GRANTED IN PART AND DENIED IN PART. References to the Topps contract are excluded from the liability phase of the trial. References to K3 and Rockpile during the liability phase of the trial will be limited to general communications between the parties over those contracts. References to specific terms or performance

under those contracts are excluded unless proffered and approved by the court outside the presence of the jury.

- 3) Plaintiff's motion *in limine* no. 3 (dkt. #206) is GRANTED IN PART AND DENIED IN PART. The release and hold harmless document (dkt. #201-1) may be admitted for the limited purpose of demonstrating the meaning of "deposit." In all other respects, the motion is granted.
- 4) Plaintiff's motion *in limine* no. 5 (dkt. #208) is GRANTED. NEJGID, LLC's breach of contract counterclaim is DISMISSED without prejudice.
- 5) On or before June 23, 2016, the parties may provide briefing on:
  - a. the availability of an impossibility defense and the appropriate jury instructions for such a defense;
  - b. which party has the burden to prove that the non-breaching party was not able to perform its contractual obligations; and
  - c. whether the anticipatory breach claim is an issue for the jury during the liability phase or damages phase of trial.
- 6) By end of day June 23, 2016, the parties are to meet and confer on whether specific statements could be redacted from exhibits to respond to the Rule 408 objections.
- 7) On or before June 23, 2016, at noon, the parties should submit amended deposition designations in the form described by the court. The parties should also email those filings in word to chambers at [wiwd\\_wmc@wiwd.uscourts.gov](mailto:wiwd_wmc@wiwd.uscourts.gov).
- 8) On or before June 23, 2016, at noon, plaintiff should provide its objections to defendants' timeline no. 2 and a proposed index for the jury binder.

Entered this 22nd day of June, 2016.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge